IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA NO.1985 of 2003

DATE OF DECISION: January 8, 2007

Manjit Kaur

….Appellant.

VERSUS

Manjit Kaur and others

….

Respondents

CORAM:- HON'BLE MR. JUSTICE VINEY MITTAL

PRESENT: Shri Arun Jain, Advocate for the appellant.
Shri Sumeet Mahajan, Advocate for the respondents.

Viney Mittal,J.

This order shall dispose of two regular second appeals being RSA No.1985 of 2003 and RSA No.2422 of 2003. Both the appeals have arisen out of the common judgments and decree of the two Courts below. RSA No.1985 of 2003 has been filed by defendant No.2 Manjit Kaur daughter of Mehar Singh, RSA No.2422 of 2003 has been filed by Manjinder Kaur and others, who are the legal representatives of the deceased plaintiff Manjit Kaur wife of Iqbal Singh.

The deceased plaintiff Manjit Kaur wife of Iqbal Singh filed a suit for possession with regard to the house in question. It was claimed by the plaintiff that Mehar Singh was a friend of father-in-law of the plaintiff. The aforesaid Mehar Singh had been permitted to

use some portion of the house in question as a licencee, since at that point

of time father-in-law of the plaintiff, namely, Laik Singh had shifted to Delhi. The licence deed dated September 2, 1974 was executed between the parties and the licence fee was fixed at the rate of Rs.250/- per month. The said licence deed was renewed by writing another deed dated April 1, 1975 and again on December 30,1975 and later on in the year 1978. Lastly, through the last licence deed, the licence fee was fixed at Rs.350/- per month. It was claimed by the plaintiff that after the death of Mehar Singh, the licencee defendants were absolutely having no right to continue to occupy the premises, since the licence could not be treated to be heritable. On that basis, the plaintiffs sought the possession of the site in question.

The defendants contested the suit. They admitted the execution of various licence deeds by Mehar Singh, their predecessor-in-interest but claimed that as a matter of fact the possession of Mehar Singh and thereafter of the defendants was that of the tenants. It was claimed that licence deed had been got executed by the owners merely with a view to defeat the provisions of the Rent Act. The defendants have claimed that since their existed a relationship of landlord and tenant between the parties, therefore, the Civil Court had no jurisdiction and only way the ejectment of the tenants could be sought was by taking recourse to the proceedings under the Rent Act.

The trial Court decreed the suit filed by the plaintiff. It was held that in view of the specific terms and conditions of the various licence deeds, Mehar Singh was to be treated as a licencee and

after his death, the defendants had absolutely no right, title or interest to continue in possession of the suit property.

The defendants took up the matter in appeal. The learned First Appellate Court re-appraised the entire evidence. On such re-appraisal, the learned First Appellate Court came to the conclusion that terms and conditions of various licence deeds depicted that the relationship between the parties was that of landlord and tenant and that the defendants were to be treated as tenants of the portion of the property which was given to them by way of the aforesaid deeds and their occupation could not be treated to that of the trespassers qua the aforesaid portion. However, the learned First Appellate Court further held that the occupation of the remaining portion of the house, the possession whereof had not been given by the aforesaid deeds could not be treated that of tenants and qua that portion the possession of the defendants was that of trespassers. Consequently, the appeal filed by the defendants was partly allowed. Qua the portion which was covered under the deeds executed by Mehar Singh, the possession of the defendants was held to be that of tenants and as such suit qua the said portion was dismissed. However, the suit for possession qua the remaining portion was

decreed holding the defendants to be trespassers qua the remaining portion.

It is in these circumstances that two separate appeals have been filed by the parties before this Court.

I have heard Shri Arun Jain, the learned counsel appearing for Manjit Kaur daughter of Mehar Singh and Shri Sumeet

Mahajan, the learned counsel appearing for the legal representatives of the plaintiffs and with their assistance have also gone through the record of the case.

A conclusion has been arrived at by the First Appellate Court that the defendants are proved to be the tenants over the portion of the suit property which was given to them (or their predecessor Mehar Singh) by way of various licence deeds. The terms and conditions of the deeds have been interpreted by the First Appellate Court. An exclusive possession of the defendants is proved. It is also proved that they have been paying the monthly charges of the property in their exclusive possession. The defendants are shown to be in exclusive control of the property where they are running their business. All these factors clearly go to show that the intention between the parties to create tenancy qua the portion of the property regarding which the possession had been given and there existed a relationship of landlord and tenant, although the same was camouflaged and termed as a relationship of licencor and licencee. Thus, the Appellate Court has rightly held that the defendants could

not be dispossessed from the portion of the suit property qua which the tenancy is proved.

Similarly, a finding of fact has been given by the Appellate Court that there is no warrant or justification to uphold the tenancy of the defendants qua the remaining portion of the suit property, which is not shown to have been given by the plaintiff or her father-in-law at any point of time to the defendants or the deceased

Mehar Singh and, therefore, qua such portion the possession of the defendants has been held to be that of trespassers. The said finding is also absolutely justified as per the evidence on the record.

Nothing has been shown that the findings of fact recorded by the First Appellate Court suffer from infirmity or are contrary to the record.

I do not find any justification to interfere in the aforesaid findings of fact, in any manner.

No question of law, much less any substantial question of law, arises in the present two appeals.

Both the appeals are consequently dismissed.

January 8, 2007 (Viney Mittal)
KD Judge

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA NO.2422 of 2003

DATE OF DECISION: January 8, 2007

Manjinder Kaur and others

….Appellants.

VERSUS

Gurmail Kaur and others

….

Respondents

CORAM:- HON'BLE MR. JUSTICE VINEY MITTAL

PRESENT: Shri Sumeet Mahajan, Advocate for the appellants.
Shri Arun Jain, Advocate for the respondents.

Viney Mittal,J.

For orders see RSA No.1985 of 2003 (Manjit Kaur v. Manjit Kaur and others), decided on January 8, 2007.

January 8, 2007
KD

(Viney Mittal)
Judge